



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar Street #300A  
Dallas, Texas 75215

OR2003-7357

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189549.

The Dallas Police Department (the "department") received a request for information on "all personnel, discipline, commendation, Internal Affairs, Public Integrity, recruit, training and work history (including off duty assignments)" for a named police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have reviewed the representative sample of information you submitted and considered the exceptions you claim.<sup>1</sup>

First, we address your claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information made confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. The submitted documents contain fingerprint

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<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. They provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold the fingerprints under section 552.101 in conjunction with section 559.003 of the Government Code.

Next, the submitted information contains a social security number of an individual other than the named peace officer. The social security number may be confidential under federal

law. Section 552.101 encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted documents also contain confidential criminal history record information ("CHRI"). Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Furthermore, "[n]o agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself." 28 C.F.R. § 20.21(c)(2). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. The information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, the marked information is excepted from required public disclosure by section 552.101 of the Government Code.

Section 552.101 also encompasses statutes such as the Medical Practice Act (the "MPA"). Section 159.002 of the Occupations Code reads, in part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided in this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The submitted information contains confidential medical records that are subject to the MPA. These documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* Occ. Code §§ 159.002(c), .004, .005. We have marked the medical records subject to the MPA.

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Having reviewed the submitted information, we find that some of the information is protected by common-law privacy and must therefore be withheld pursuant to section 552.101. We have marked this information.

Next, we address your arguments under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024.<sup>2</sup> Therefore, the department must withhold the information we have marked under section 552.117(a)(2).

Finally, section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Gov't Code § 552.130(a)(1). Accordingly, you must withhold the Texas motor vehicle information we have marked.

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<sup>2</sup> "Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

We now address your claims under section 552.108 of the Government Code for the remainder of the information. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

A portion of the submitted documents contain information that identifies undercover officers. You indicate these documents identify specific training courses received by undercover officers, identifies the name of the undercover narcotics unit and identifies members of the undercover unit. You explain how the release of this type of information could jeopardize the anonymity of the undercover officers and place their lives at risk. Likewise, you assert that, in this instance, release of any portion of the submitted internal affairs file of the named officer will identify that officer as an undercover officer. We agree that release of the submitted information identifying undercover officers would interfere with the department's law enforcement efforts. Therefore, information that identifies officers as undercover officers, which we have marked, and information in the internal affairs file may be withheld under section 552.108(b)(1).<sup>3</sup> See Open Records Decision No. 211 at 3-4 (1978).

Finally, you claim that the student manual relating to defensive tactics used by the department should also be excepted from disclosure under section 552.108(b)(1). You assert that release of this information could be used to the advantage of resisting individuals by giving them "advanced knowledge of defensive tactics that officers in the field would use to control or subdue a resisting individual." Upon review, we find you have demonstrated that the release of this information would interfere with law enforcement. Accordingly, we have marked the information that the department may withhold pursuant to section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the biometric information we have marked under section 552.101 in conjunction with section 559.003. The department must withhold any responsive CHRI obtained from DPS or any other criminal justice agency under section 552.101 in conjunction with Chapter 411 of the Government Code. The department must withhold the confidential medical records we have marked under section 552.101 in conjunction with section 159.002 of the Occupations Code. Private information we have marked must also be withheld under section 552.101. Section 552.117 information pertaining to the officer must be withheld, and the department must withhold the Texas

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<sup>3</sup>Because section 552.108 is dispositive to the information in the Internal Affairs Division file, we do not address your other claims regarding this information.

driver's license and motor vehicle information under section 552.130. The department may withhold the information found in the Internal Affairs Division file pursuant to section 552.108(b)(1). Information we have marked that identifies undercover officers and the defensive tactics manual may also be withheld under section 552.108(b)(1). Finally, the department must withhold the social security number of the individual other than the peace officer if it was obtained or maintained by the department pursuant to a law enacted on or after October 1, 1990. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 189549

Enc. Submitted documents

c: Mr. Jason Trahan  
The Dallas Morning News  
P.O. Box 655237  
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(w/o enclosures)